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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,190	11/04/2003	Edward R. diGirolamo	4782-042	5075
24112 7590 07/10/2008 COATS & BENNETT, PLLC 1400 Crescent Green, Suite 300 Cary, NC 27518				
EXAMINER CHAPMAN, JEANETTE E				
ART UNIT 3633		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/701,190

Applicant(s)

DIGIROLAMO ET AL.

Examiner

Jeanette E. Chapman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

In view of the appeal brief and evidence (Exhibit A: Yahoo) filed on 3/7/08, PROSECUTION IS HEREBY REOPENED. A new office action has been set forth below

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Brian Glessner/
Brian Glessner
Supervisory Patent Examiner
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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims are rejected under 35 U.S.C. 102(b) as being anticipated by Soucy (3778952)

Claim 1.

Soucy discloses a stud spacer 32 for extending between two studs 12 comprising:

- a. a main member 34 adapted to extend between the two studs 12;
- b. the main member 34 including first and second end portions 38 and 36-42;
- c. a projection 38 and 42 extending from each end portion;
- d. wherein the main member 34 and the projections form the stud spacer 32; and
- e. wherein the projections of the main member are configured to interlock with similar projections of other stud spacers; see figures 1-2.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Soucy in view of Cubbler, Jr. et al (3979874).

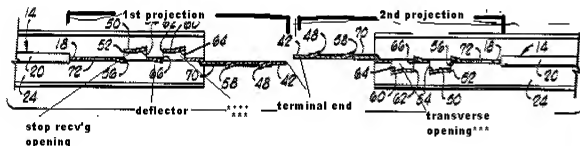
Claim 2.

(Original) The stud spacer of claim 1

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Soucy lacks each projection includes a locking surface, an opening, a deflector disposed adjacent the opening, and a stop. Cubbler Jr. et al discloses an alternative securing means between spacers 12/ 14. The securing means includes:

- Projections 42 Note the projections are considered as extending from the point adjacent reference number 42 to the beginning of element 20 in figure 5. see annotation on patent figure below.
- A locking surface between 44 and 46
- An opening adjacent or on the inside of element 60
- Deflector or cam surface 66 disposed adjacent the opening
- A stop 50



claim 3.

Cubbler Jr. et al discloses when two projections 42 are interlocked, the locking surface of one projection engages the stop 66 of the other projection. See figures 3 and 5

claim 4.

Cubbler discloses that each projection 42 is elongated and

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when connected to a similar projection at least partially overlies or underlies the similar projection. See figures 3 and 5 and accompanying text.

claim 5.

Cubbler et al discloses that each of the two projections includes a deflectable terminal end 48 and an opening adjacent or on the inner side of 60.

claim 6.

Cubbler, Jr. et al each projection includes a terminal end portion adjacent ref number 42, a locking tab 48 disposed on the terminal end portion a deflector 58 disposed inwardly of the locking tab 48; an opening, adjacent 58, formed in the projection adjacent the deflector 58; and a stop 48 disposed inwardly of the opening.

claim 7.

Soucy discloses a stud spacer assembly for extending between a series of studs , comprising:

a.

at least first and second stud spacers 32 wherein each stud spacer extends between a pair of studs 12;

b. said first stud spacer including a first projection 38 and said second stud spacer including a second projection 42;

c. said first and second projections adapted to interlock so as to connect the first and second stud spacers together, see figures 1-2; and

Soucy lacks each projection includes a locking surface, an opening , a deflector disposed adjacent the opening, and a stop and wherein when interlocked, the locking

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surface of the first projection is engaged with the stop of the second projection and the locking surface of the second projection is engaged with the stop of the first projection. Cubbler Jr. et al discloses an alternative securing means between spacers 12/ 14. The securing means includes:

- Projections 42
- A locking surface between 44 and 46
- An opening adjacent element 64, see figure 5
- Deflector or cam surface 66 disposed adjacent the opening
- A stop 50

It would have been obvious to one of ordinary skill in the art to modify soucy to include the alternative securing means wherein each projection includes a locking surface and a stop and wherein when interlocked, the locking surface of the first projection is engaged with the stop of the second projection and the locking surface of the second projection is engaged with the stop of the first projection as shown in figures 3 and 5 of Cubbler , Jr. et al. in order to provide a more secure attachment between spacers 32 preventing inadvertent dislodgment

claim 8.

Cubbler, Jr. et al discloses that when connected the first and second projections overlies each other. See figures 3 and 5 and accompanying text.

claim 9.

Cubbler discloses that each projection 42 includes an opening adjacent 64 and wherein when connected the first projection 42 extends through the opening of the second

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projection 42 and the second projection 42 extends through the opening of the first projection 42. See figures 3 and 5 and accompanying text.

claim 10.

Cubbler, Jr. et al discloses at least a portion 48/58 of each projection 42 is at least slightly yieldable such that a portion of each projection can slightly flex during the course of interconnecting the projections.

claim 11.

Cobbler, Jr. et al discloses that each projection 42 includes an opening, adjacent 64 and a deflector 58 and wherein the locking surface of each projection is formed on a terminal end portion of the projection 42 and wherein when connected the terminal end portion of the first projection projects through the opening in the second projection and the terminal end portion of the second projection projects through the opening in the first projection. The projection has been considered as extending from the pointed end to member to element 20 shown in figure 5;

claim 12.

Cubbler, Jr. et al discloses the deflector 58/66 of the first projection 42 deflects the terminal end of the second projection 42 through the opening, adjacent 64 of the first projection 42 and wherein the deflector 58/66 of the second projection 42 deflects the terminal end of the first projection 42 through the opening, adjacent 64 in the second projection 42.

claim13.

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Cobbler, jr. et al discloses the locking surface includes a tab 48 and the stop 50 includes a tab receiving opening, figure 5, adjacent 54, and wherein when the first and second projections 42 are interconnected the first projection is extended over a portion of the second projection and a portion of the first projection is inserted through the opening adjacent 64 in the second projection such that the locking tab 48 of the first projection 42 seats within the tab receiving opening, adjacent 54 formed in the second projection 42 and wherein the second projection 42 is extended underneath a portion of the first projection 42 and a portion of the second projection 42 is inserted through the opening, adjacent 64 in the first projection 42 wherein the locking tab 48 of the second projection seats within the tab receiving opening , adjacent 54, of the first projection 42. See figures 3 and 5.

claim 14.

Cubbler et al discloses each projection 42 includes a deflector 58 disposed adjacent the tab receiving opening, adjacent 54 and 64, and wherein the deflector 58/66 on the first projection deflects a portion of the second projection 42 upwardly through the opening adjacent 54 and 64, in the first projection, and wherein the deflector 58/66 in the second projection 42 deflects a portion of the first projection 42 downwardly through the opening, adjacent 54/64, in the second projection 42.

claim 15.

Cubbler, Jr. et al discloses the locking surface of each projection includes a tab 48 and wherein the stop 50 of each projection 42 includes a tab receiving opening adjacent 54 and when the projections are connected the respective tabs 48 are seated within the tab

receiving openings, adjacent 54.

claim 16.

soucy discloses a wall structure, figure 1 comprising:

- a. a series of spaced apart studs 12 with each stud having an opening formed therein; see figure 2
- b. a series of stud spacers 32 extending between respective studs;
- c. each stud spacer including first and second projections 38 and 42 that extend from opposite ends of the stud spacer; See figures 1-2 and 4
- d. said first and second projections 38 and 42 of each stud spacer 32 adapted to connect to first and second projections of other stud spacers so as to interconnect the stud spacers of the wall structure, figures 1-2; and
- e.

Soucy lacks each projection including a locking surface and a locking stop and wherein when interconnected the locking surface of the first projection is engaged with the locking stop of the second projection and the locking surface of the second projection is engaged with the locking stop of the first projection. Cubbler, Jr et al discloses each projection 42 including a locking surface and a locking stop 50 and wherein when interconnected the locking surface of the first projection 42 is engaged with the locking stop 50 of the second projection and the locking surface of the second projection 42 is engaged with the locking stop 50 of the first projection.

It would have been obvious to one of ordinary skill in the art to modify soucy to include the alternative securing means wherein each projection includes a locking surface and a

stop and wherein when interlocked, the locking surface of the first projection is engaged with the stop of the second projection and the locking surface of the second projection is engaged with the stop of the first projection as shown in figures 3 and 5 of Cubbler, Jr. et al. in order to provide a more secure attachment between spacers 32 preventing inadvertent dislodgment.

claim 17.

Soucy discloses when connected the respective projections 38 and 42 at least partially overlies one another. See figures 1-2

claim 18.

Cubbler et al discloses the first projection 42 includes a terminal end portion, adj ref no. 42 in figure 2, and an opening adjacent 54/64 and the second projection 42 includes a terminal end and an opening adjacent 54/64 and wherein the terminal end portions of the respective projections 42 are projected through the openings within the projections when the projections are interconnected.

claim 19.

Soucy discloses a method of interconnecting a first stud spacer 32 with a second stud spacer 32 extending between studs 12 in a wall structure, column 1, lines 60-65 wherein the first stud spacer 32 includes a first projection 38 and the second stud spacer includes a second projection 42, comprising the steps of:

- a. projecting the first and second projections of the first and second stud spacers through an opening in a stud; see figures 1-2

Soucy discloses projecting the first projection 38 through an opening in the second projection but lacks engaging a locking surface associated with the first projection with a stop associated with the second projection; and

Soucy further lacks projecting the second projection through an opening in the first projection and engaging a locking surface associated with the second projection with a stop associated with the first projection.

Soucy lacks each projection includes a locking surface, an opening , a deflector disposed adjacent the opening, and a stop. Cubbler Jr. et al discloses an alternative securing means between spacers 12/ 14. The securing means includes:

- Projections 42
- A locking surface between 44 and 46
- An opening adjacent or on the inside of element 60
- Deflector or cam surface 66 disposed adjacent the opening
- A stop 50

Cubbler et al further discloses projecting the first projection 42 through an opening adjacent 54/64 in the second projection 42 and engaging a locking surface associated with the first projection with a stop 50 associated with the second projection 42; and cubbler et al further discloses projecting the second projection 42 through an opening, adjacent 54/64 in the first projection 42 and engaging a locking surface 50 associated with the second projection 42 with a stop 50 associated with the first projection 42. Cubbler discloses each projection 42 includes a locking surface 50, an opening 54/64 , a deflector 58/66 disposed adjacent the opening 54/64, and a stop 50.

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Claim 20.

Cubbler et al discloses engaging the first projection 42 with a deflector 58/66 associated with the second projection 42 and deflecting the first projection 42 through the opening adjacent 54/64, in the second projection 42, and engaging the second projection 42 with a deflector 58/66 associated with the first projection 42 and deflecting the second projection 42 through the opening adjacent 54/64 in the first projection.

claim 21.

Cubbler, Jr. et al discloses at least slightly bending a portion 58 of each projection as the two projections 42 are interconnected.

claim 22.

Cubbler, Jr. et al discloses the projections are at least slightly flexed in response to engaging the respective deflectors 66 carried by the projections. Note the projections are considered as extending from the point adjacent reference number 42 to the beginning of element 20 in figure 5.

Claim 23.

Cubbler et al discloses the locking surfaces comprise locking tabs 48 and wherein the stops 50 comprises locking seats 52 and wherein when the projections 42 are interconnected the locking tabs 50 of the respective projections are seated within the locking seats 52 of the projections.

claim 24.

Cubbler, Jr. et al discloses including contacting a terminal end of the first projection 42 with a deflector 66/58 disposed on the second projection 42 and deflecting the terminal

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end of the first projection 42 downwardly through the opening adjacent 54/64 in the second projection 42; and contacting a terminal end portion of the second projection 42 with a deflector 66/58 on the first projection 42 and deflecting the terminal end of the second projection 42 upwardly through the opening adjacent 54/64 42 in the first projection.

Claim 25.

Cubbler, Jr et al discloses the locking tabs 48 carried by the first and second projections 42 snap into the tab receiving openings adjacent 54/64 once the terminal ends of the respective projections 42 have been inserted through the openings adjacent 54/64 in the respective projections.

Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soucy in view of Hunter (4007570)

claim 26.

Soucy of claim 1 lacks one or more flanges disposed on either end portion of the main member for connecting to one of the two studs 14. Hunter discloses a spacer 7 spacing studs 14 including two flanges 8 on end portions, one flange 8/10 disposed on the first end portion of the main member 7 and one flange 8/10 disposed on the second end of the main member 7; each flange web portion extending generally normal relative to the main member. See figure 1.

claim 28.

Hunter discloses a stud spacer 7 of claim 1 including a pair of spaced apart flanges 8/10 disposed on the first end portion of the main member for connecting to one of the two

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studs; the spaced apart flanges 8/10 being angled with respect to the main member 7 such that the flanges 8/10 extend generally normal to the main member; and wherein a projection 12 extending from the first end portion of the main member extends between the pair of spaced apart flanges. See figure 1.

It would have been obvious to one of ordinary skill in the art to modify Soucy to include the flanges in order to strengthen the assembly in the area of the connection between the stud to the spacers as shown by Hunter.

Claims 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soucy in view of Cubbler, Jr. et al and further in view of Hunter (4007570)

claim 29.

Hunter discloses a stud spacer 7 wherein each stud spacer 7 includes opposed ends, and wherein each stud spacer includes one or more flanges 8/10 disposed on one or both end portions of the stud spacer for connecting the stud spacer to one or more studs 14.

claim 30.

Hunter discloses a the stud spacer 7 assembly wherein each stud spacer includes a pair of spaced apart flanges 8/10 disposed on each end portion thereof for connecting to one stud.

claim 31.

Hunter discloses a wall structure wherein each stud spacer 7 includes one or more flanges 8/10 disposed on opposite end portions for connecting each stud spacer 7 to at least two spaced apart studs 14 that form a part of the wall structure; and wherein each

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flange is connected to one stud such that the series of stud spacers 7 that form a part of the wall structure are interconnected to the studs 14.

claim 32.

Hunter discloses a wall structure wherein each consecutive pair of studs 14 of the wall structure are interconnected by a stud spacer 7, and wherein the stud spacer includes at least one flange 8/10 disposed on opposite ends thereof, and wherein each flange is connected to one stud 14.

claim 33.

Hunter discloses 7 securing at least one of the first or second stud spacers to the stud.

claim 34

Hunter discloses stud spacers which include one or more flanges 8/10 disposed on one or more end portions thereof, and wherein the method includes fastening the one or more flanges 8/10 of at least one of the stud spacers 7 to the stud 14 thereby interconnecting the stud 14 with at least one of the stud spacers 7.

It would have been obvious to one of ordinary skill in the art to modify Soucy to include the flanges in order to strengthen the assembly in the area of the connection between the stud to the spacers as shown by Hunter

All arguments are moot in view of the new ground of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JEANETTE CHAPMAN/
PRIMARY EXAMINER
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